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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-740
Regulation title	Adult Protective Services
Action title	Implement 2004 APS Legislation
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to conform the regulation to Chapter 1011 and Chapter 749, 2004 Acts of Assembly. The new legislation establishes enhanced protections for Virginia's vulnerable adult population and best practices in Adult Protective Services (APS) for the Commonwealth. Recommendations are based on those from an APS Advisory Committee that was established to assess Virginia's APS program and a legislative report issued in December 2002 entitled, *Adult Protective Services: Identifying and Preventing Adult Abuse, Neglect, and Exploitation*, which included a comprehensive review of other states' APS programs and suggestions received from interested persons.

Adult protective services in Virginia are provided to any person aged 60 and over and adults aged 18 and over who are incapacitated. The *Code of Virginia*, § 63.2-1603, defines an "incapacitated person" as "any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate, or carry out responsible decisions concerning his or her well-being."

The best national estimate of the incidence and reporting of elder abuse and neglect is that only 16 percent of all incidences are reported to APS (National Elder Abuse Incidence Study (NCAIS), 1998). Many adult abuse researchers have indicated that we have just seen the "tip of the iceberg" of adult abuse reported cases. Despite a trend toward an increased emphasis on a quality aging experience and

a commitment to improving the lives of the elderly and adults who have a disability, abuse, neglect, and exploitation of the elderly has gone largely unidentified and unnoticed.

Programs that demonstrate collaborative, multidisciplinary efforts are most successful in discovering, preventing, and prosecuting adult abuse, neglect, and exploitation. As there are no guiding federal statutes on APS, states vary significantly in how they receive reports of abuse, how perpetrators are handled, and how penalties are imposed. The new APS legislation was enacted in an attempted to consider the “best of the best” practices in APS across the nation and implement programs that have worked in Virginia.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Federal authority is Title XX of the Social Security Act, Section 2001, number (3). The State statute providing the mandate for this regulation is found in the *Code of Virginia*, §§ 63.2-217 and 63.2-1603 through 1610. The amendments described herein are necessary to conform the regulation to requirements set forth in Chapter 1011 and Chapter 749, 2004 Acts of Assembly.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the regulation is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Chapters 1011 and 749, 2004 Acts of Assembly, amend §§ 63.2-1603 through 63.2-1610 the *Code of Virginia* regarding APS by:

- 1) Clarifying population served and adding that reports of suspected abuse, neglect, or exploitation may be made to the local department of social services (local department) OR the 24-hour, toll-free APS hotline;
- 2) Requiring local departments to initiate an investigation within 24 hours of the report and clarifying what is meant by a “valid” report;
- 3) Requiring the local department to refer matters as appropriate to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation;
- 4) Allowing the local departments, with informed consent, to take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment that are relevant to the investigation;
- 5) Clarifying that APS will not investigate in state correctional facilities;
- 6) Expanding the list of APS situations in which law enforcement must be notified to include sexual abuse; death, serious bodily injury or disease believed to be caused by abuse or neglect; and any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm;
- 7) Changing the timeframe for reporting of suspected adult abuse, neglect, or exploitation by mandated reporters to “immediately” except reports by nursing facility inspectors employed by the Department of Health in the course of a survey;

- 8) Adding persons to the list of APS mandated reporters, including persons in professions regulated by the Department of Health Professions, emergency medical services personnel, and guardians and conservators;
- 9) Noting that a mandated reporter providing professional services in a hospital, nursing facility, or similar institution may, in lieu of reporting directly to APS, notify the person in charge, who shall report such information immediately upon determination that there is reason to suspect abuse, neglect, or exploitation;
- 10) Adding accounting firms to the list of financial institutions who may report voluntarily;
- 11) Prohibiting employers of mandated reporters from preventing a mandated reporter to report directly to APS;
- 12) Requiring employers of mandated reporters to ensure that employees are notified that they are mandated reporters and are trained on reporting responsibilities;
- 13) Adding criminal penalties for persons 14 years of age or older who make a false report;
- 14) Authorizing the Commissioner of the Department of Social Services to impose civil money penalties for cases of non-reporting by all mandated reporters except law-enforcement officers (the courts would take these cases);
- 15) Requiring mandated reporters to report immediately to the appropriate medical examiner and law-enforcement agency when there is reason to suspect that an adult died as a result of abuse or neglect and authorizing the medical examiner to order an autopsy;
- 16) Relieving a mandated reporter from reporting to APS if he has actual knowledge that the same matter has already been reported;
- 17) Requiring all law-enforcement departments and other state and local departments, agencies, authorities, and institutions to cooperate with APS in the detection, investigation, and prevention of adult abuse, neglect, and exploitation;
- 18) Allowing APS to be provided through an appropriate court order for a period of 15 days (instead of 5);
- 19) Requiring the Department of Social Services to develop a plan and cost estimate by November 1, 2004, to prepare, disseminate, and present educational programs and materials on adult abuse, neglect, and exploitation to all categories of newly mandated reporters and that the penalty provisions shall not apply to newly mandated reported until the delivery of such training; and
- 20) Requiring the Department of Social Services to develop a model protocol and procedures for, as well as cost estimates for the operation of, adult fatality review teams by November 1, 2004.

Potential issues that will need development include:

- 1) Developing procedures to foster cooperation between all the regulatory, administrative, and legal authorities that may be involved in an APS investigation or referral, including the new groups such as medical examiners and other professionals who fall under the Board of Health Professions per items #3 and #6;
- 2) Involving employers of mandated reporters to a greater extent in the efforts to notify mandated reporters of their responsibilities per #11 and #12;
- 3) Authorizing the Commissioner of the Department of Social Services to impose civil money penalties for cases of non-reporting by all mandated reporters except law-enforcement officers (the courts would take these cases) per item # 14;
- 4) Enhancing the role of law-enforcement departments and medical examiners and other state and local departments, agencies, authorities, and institutions to cooperate with APS in the detection, investigation, and prevention of adult abuse, neglect, and exploitation (#17); and
- 5) The development of a model protocol and procedures for the operation of adult fatality review teams (item #20).

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Prior to the submission of the proposed legislation, an advisory committee representing a wide array of aging and long-term care service providers and advocates, as well as State agency representatives from the Health and Human Resources Secretariat was convened. The committee met several times to suggest changes to the APS section of the *Code of Virginia*, which had not been updated comprehensively since the late 1970's, and reviewed several drafts before the final submission to the Secretary of Health and Human Resources and the Governor. The resulting legislation represented a general consensus of ideas from across disciplines and programs as to how to better protect Virginia's most vulnerable adults.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

Local departments of social services receive and investigate close to 12,000 reports of adult abuse, neglect, and exploitation annually. Adult protective services is the only program authorized by the Code of Virginia (§ 63.2-1607) to investigate suspected abuse, neglect or exploitation across all care settings (except State correctional facilities). Reports alleging that adults are abused, neglected, or exploited, or are at risk of such, and are unable to protect their own interests due to vulnerability associated with incapacity or due to a physical or mental disability are investigated. Services are provided to those adults who are found, through an APS investigation, to require protective services. The provisions of Chapters 1011 and 749, 2004 Acts of Assembly, expand the categories of persons who are mandated reporters for APS and add other protections for the Commonwealth's most vulnerable adults.